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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/551,213

03/24/2006

Paul Haslauer

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07/13/2009

LADAS & PARRY LLP
26 WEST 61ST STREET
NEW YORK, NY 10023

EXAMINER

HELLING, KAITLYN ELIZABETH

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

07/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/551,213 | Applicant(s) HASLAUER, PAUL | |
| | Examiner KAITLYN E. HELLING | Art Unit 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Amendment filed on April 18, 2008 has been entered. Claims 1-18 and 20 remain pending in the application, claim 19 is cancelled, and claim 21 is newly added.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 6, 8, 17, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerdes (US 1564552).

Regarding claims 1-3, Gerdes discloses stimulating a human body in a warm or hot air booth (chamber, Fig 1) with a cold medium (cool air), the improvements characterized by circulating air in the booth on a ceiling side thereof (via fan 14) and introducing the cold medium into the booth at the ceiling side (page 2 lines 42-48), and periodically interrupting the circulating (page 2 lines 55-59), wherein the introducing is in the region of the circulating (see Fig 1).

Regarding claim 6, Gerdes discloses the method according to claims 1 and 3 further comprising heating the booth on a bottom side (heat source 16 on the bottom of the walls).

Regarding claim 8, Gerdes discloses the method as described above, wherein fresh air is guided into the booth through a pipe (13, Fig 1).

Regarding claims 17, 18 and 20, Gerdes discloses the method as described above, wherein the introducing fluctuates a thermal course for the human body in the booth at intervals (page 2 lines 55-63); wherein the circulating is turned on for intensive

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thermal stimulus of the human body in the booth and, after an interval or during the intervals, turned off so that temperature will return to normal (inherent in the normal use of the device). The language of the claims is broad enough to include the method as disclosed by Gerdes. The term "interval" is sufficiently broad to include any period of time, since it has not been defined.

Regarding claim 21, Gerdes discloses a booth in which air in the booth (hot air as heat rises and would therefore be pressed downwards while the fan is on) on a ceiling side thereof (via fan 14) and introducing the cold medium into the booth at the ceiling side (page 2 lines 42-48), and periodically interrupting the circulating (page 2 lines 55-59), wherein the introducing is in the region of the circulating (see Fig 1). The language of the claims is broad enough to include the method as disclosed by Gerdes. The term "interval" is sufficiently broad to include any period of time, since it has not been defined.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 4, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes as applied to claims 1-3 above, and further in view of Haslauer (EP 943308).

Gerdes discloses the method with the steps and features as described above, wherein the air circulating comprises rotating a rotor (page 2 lines 1-5) covered by an ejector disk (fan elements 14, see Fig1) for the introducing of the cold medium

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outwardly therefrom. Gerdes does not disclose the cold medium being in the form of snow, ice flakes, or granular ice cubes. Haslauer teaches a method for stimulating the body by using ice granules. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Gerdes by using ice granules as the cold medium to stimulate the body, as taught by Haslauer, in order to quickly cool the user to a desired temperature.

6. Claims 5, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes in view of Haslauer as applied to claim 4 above, and further in view of Kamada et al (US 6503060 B1).

Gerdes in view of Haslauer discloses the method as described above, but does not disclose a segment ring. Kamada teaches a segment ring (4, Fig 18) in order to shield the components of a fan (50) from a user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Gerdes in view of Haslauer by including a segment ring, as taught by Kamada in order to increase the safety of the user.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes as applied to claim 6 above, and further in view of Schloss (US 4044772).

Gerdes discloses the method as described above, but does not disclose the method wherein the heating comprises projecting a pipe from a furnace into the booth. Schloss teaches a warm air booth wherein heated air is introduced into the booth (13) through a pipe (duct 27, Fig 1) from a furnace (heating element 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have

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modified the method Gerdes by using a pipe to introduce heated air from a furnace into the booth, as taught by Schloss, in order to heat the booth while supplying air to the user.

8. Claims 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes in view of Haslauer in view of Kamada et al as applied to claim 10 above, and further in view of Schloss (US 4044772).

Gerdes in view of Haslauer in view of Kamada discloses the method as described above, but does not disclose the method wherein the heating comprises projecting a pipe from a furnace into the booth. Schloss teaches a warm air booth wherein heated air is introduced into the booth (13) through a pipe (duct 27, Fig 1) from a furnace (heating element 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method Gerdes in view of Haslauer in view of Kamada by using a pipe to introduce heated air from a furnace into the booth, as taught by Schloss, in order to heat the booth while supplying air to the user.

9. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes in view of Haslauer as applied to claim 9 above, and further in view of Schloss.

Gerdes in view of Haslauer discloses the method according to claim 9, as described above, characterized by guiding fresh air into the booth through a pipe (Gerdes Fig 1), but does not disclose the method wherein the heating comprises projecting a pipe from a furnace into the booth. Schloss teaches a warm air booth

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wherein heated air is introduced into the booth (13) through a pipe (duct 27, Fig 1) from a furnace (heating element 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method Gerdes in view of Haslauer by using a pipe to introduce heated air from a furnace into the booth, as taught by Schloss, in order to heat the booth while supplying air to the user.

Response to Arguments

10. The request under 37 CFR 1.181 for supervisory authority has not met the requirements of a petition, a point by point review, timely filing, etc. and therefore will not rise to the level of a formal petition.

Additionally, if the requirements were met, the petition is premature in that the examiner has not reconsidered and repeated the office action. Most importantly, the alleged request is directed to the merits of a rejection. This is an appealable issue. Lastly, even if a formal petition had been filed, it is untimely as applicant is outside the two months from the mailing date of the January 16, 2008 office action.

11. Applicant's arguments, see Remarks page 6, filed April 18, 2008, with respect to the 35 USC 112, second paragraph rejection of claim 1 have been fully considered and are persuasive. The rejection has been withdrawn.

12. Applicant's arguments filed April 18, 2008 have been fully considered but they are not persuasive.

With respect applicant's argument that Gerdes does not teach a cold medium in a warm or hot air booth in that Gerdes teaches the use of ray heat in a cold air booth, the examiner respectfully maintains the rejection. The radiant heat sources which are

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preferably heaters not lamps heat the air surrounding the patient thus providing the warm or hot air booth. The cool air is the driven down from the ceiling portion to stimulate the patients body within the booth.

With respect to applicant's argument that the cold air of Gerdes is used to cool higher levels of heat and not to stimulate the body, the examiner respectfully disagrees and maintains the rejection. By forcing the cool air down into the booth and over the patient who is being heated, this will necessarily stimulate the body in that the body was being treated via the heaters and then cooled via the cold air flow. This will stimulate the body.

With regard to applicant's argument regarding claims 7, 18 and 20, the examiner respectfully directs applicant's attention to the rejection above. Also, the examiner is unsure what applicant means by the argument that "the thermal fluctuation therefrom being more stimulating than steadier temperatures as well known from the saw of getting a frog to jump from boiling water but not slow, steady heating, for example."

With regards to applicant's argument that as the Gerdes patent is to achieve "uniform effect" and that uniformity is boring, not stimulating as claimed, the examiner maintains the rejections as set out above. Gerdes will provide a stimulating effect on the body by the introduction of the cold air into the warm booth. The argument that uniformity is boring and not stimulating is not persuasive.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAITLYN E. HELLING whose telephone number is (571)270-5845. The examiner can normally be reached on Monday - Friday 9:00 a.m. to 5:30 p.m. EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571)272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KAITLYN E. HELLING/
Examiner, Art Unit 3739

/Linda C Dvorak/
Supervisory Patent Examiner, Art
Unit 3739